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Definition of the Term ‘Fiduciary’; Conflict of Interest Rule—Retirement Investment Advice; Notice of proposed rulemaking and withdrawal of previous proposed rule.

Comment On: EBSA-2010-0050-0204

Definition of the Term Fiduciary; Conflict of Interest Rule- Retirement Investment Advice

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General Comment

I understand your interest in protecting the investor. Goodness knows many need that protection. But the rules, as stated, seem to make it impossible for an IRA investor, even a sophisticated one, to trade options. Since one has to trade options through a broker that collects a fee, and the "broad reach" of the definition of a Fiduciary seems to include such brokers, and the definition of an asset that is exempt from this rule specifically excludes futures, put's, calls and any other form of option, we will be out of luck. The exclusion of these securities as shown in the following paragraph as the last sentence should be changed from "Excluded from this definition" to "Also included for purposes of exemption ";

" (c) An "Asset," for purposes of this exemption, includes only the following investment products: Bank deposits, certificates of deposit (CDs), shares or interests in registered investment companies, bank collective funds, insurance company separate accounts, exchange-traded REITs, exchange-traded funds, corporate bonds offered pursuant to a registration statement under the Securities Act of 1933, agency debt securities as defined in [Financial Industry Regulatory Authority (FINRA)] Rule 6710(l) or its successor, U.S. Treasury securities as defined in FINRA Rule 6710(p) or its successor, insurance and annuity contracts, guaranteed investment contracts, and equity securities within the meaning of 17 CFR 230.405 that are exchange-traded securities within the meaning of 17 CFR 242.600. Excluded from this definition is any equity security that is a security future or a put, call, straddle, or other option or privilege of buying an equity security from or selling an equity security to another without being bound to do so."

An alternate solution would be to narrow the definition of fiduciary to exclude transaction makers such as TD Ameritrade, Charles Schwab, Interactive Brokers, etc.

During the most recent financial meltdown it was not options that caused the most pain, it was the assets that are listed already as Excluded and therefor available to IRA investors. Many options traders did much better during the 2008/2009 time period. Please do not take away this most valuable tool for profitable retirement income investing.